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Report of the United Nations High Commissioner for Human Rights**

Summary

The present report, submitted pursuant to General Assembly resolution 48/104, considers how the principles of equality between men and women and non-discrimination against women are paramount to the promotion and implementation of economic, social and cultural rights under international human rights law.

Section II focuses on clarifying the scope of State parties obligations to eliminate discrimination and ensure equality between men and women and in relation to economic, social and cultural rights. By way of illustration, section III addresses the relevance of women's economic, social and cultural rights in the context of post-conflict reconstruction and democratization policies.

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** The present report was submitted late in order to reflect the most recent information.

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08-37493

I. Introduction

1. The present report, submitted pursuant to General Assembly resolution 48/104, focuses on economic, social and cultural rights and the principles of equality between men and women and non-discrimination against women. It complements two previous reports to the Economic and Social Council at its substantive sessions (E/2006/86 and E/2007/22), which addressed the issues of legal protection of economic, social and cultural rights and the concept of progressive realization, respectively.

2. The prohibition of discrimination on any grounds is one of the pillars of international human rights law; de jure and de facto discrimination against women is therefore at the core of our work. Yet, the lesser priority given to the protection of economic, social and cultural rights is a burden often carried disproportionately by women in developing and developed societies alike. Laws, policies and programmes remain inadequate when addressing the multiple layers of discrimination that women face owing to their sex or combined with their age, race, language, religion, marital status, health status, national or social origin, birth, disability or any other grounds. Although some advances have been made, inequality persists, often as a consequence of deeply rooted practices and traditional patterns of exclusion.

3. With a view to illustrating this point, section III examines the importance of combating discrimination and promoting equality between men and women in post-conflict societies. There are two reasons for this choice. First, although different stakeholders are gradually refining their analysis of the specific types of impact of conflict on women's rights, less attention is paid to protecting women's economic, social and cultural rights in the aftermath of conflict. Second, there remains a need for greater clarity of how to adequately promote equality and non-discrimination of women in relation to these rights during reparation and reconstruction.

4. In this regard, section III discusses some opportunities a human rights perspective brings to the situation of women in post-conflict societies and, consequently, to a process of democratization and sustainable peace that incorporates all human rights on an equal footing. In doing so, the High Commissioner complements a previous report to the Human Rights Council (A/HRC/4/62), in which a broader discussion on economic, social and cultural rights in the context of conflict and post-conflict situations was presented.

II. The principles of equality and non-discrimination of women and economic, social and cultural rights

A. Background

5. Women continue to suffer discrimination in the enjoyment of their human rights, including in the realm of economic, social and cultural rights. To remedy this situation, States have undertaken obligations to ensure equality and to prohibit discrimination by not only amending legislation, but also by changing policies and practices and by taking special temporary measures. Nevertheless, perpetual imbalances in relation to the rights to work, housing, health and education offer a

few striking examples of the challenges that women face. The paragraphs below provide some examples.

6. In relation to the right to work, despite decades of international legislation, inequality continues in the form of gender segregation in the labour force, lower wages for work of equal value and other less favourable contractual conditions. Developing and developed economies incorporate more and more women in the informal sectors, girls and young women are recruited as domestic migrant workers, sometimes unpaid or exploited for sexual purposes, living in precarious conditions and without legal guarantees.[1] In this regard, data from the *Human Development Report 2007/2008* of the United Nations Development Programme (UNDP) show that women in some countries earn at best around 30 per cent less than men for work of equal value; in more extreme situations, men earn up to 500 per cent more than women for the same work.[2] The private sphere puts greater weight on women in relation to their work, since women often disproportionately carry the unremunerated workload of families and communities, including domestic labour, collection and provision of water, subsistence farming, and the care of children, persons with disabilities or illnesses and older persons.[3]

7. The enjoyment by women of the right to adequate housing presents similar disparities. Gender-neutral laws and policies fail to take into account the special circumstances of women. The predominance of customary laws and practices protecting men's ownership or inheritance of land and bias in the judiciary and public administration in relation to property are all too common forms of discrimination against women in the enjoyment of this right. One estimate suggests that women, a term which includes girls and adolescents, represent 70 per cent of the 1.5 billion people around the world who are considered inadequately housed.[4]

8. With regard to the right to health, reproductive rights and maternal mortality, the United Nations Population Fund (UNFPA) noted that "every minute one woman dies needlessly of pregnancy-related causes, a figure that has hardly improved over the past few decades" and that "another eight million or more suffer life-long health consequences from the complications of pregnancy".[5] While many of these women could be saved by timely health interventions, including access to skilled obstetric care and to properly equipped health facilities, these essential aspects of the right to health are often not guaranteed through public policies and budget allocations, particularly in rural, suburban or poverty-stricken areas, where such measures would

[1] See A/59/287/Add.1.

[2] See UNDP, *Human Development Report 2007/2008*. Indicators on the gender-related development index depict estimated earned income, based on data for the years between 1996 and 2005 and on the ratio of female/male non-agricultural wages; shares of economically active population and GDP per capita is always higher for the male population.

[3] See for example principle 24 of the Montreal Principles on Women's Economic, Social and Cultural Rights (2002), adopted by a group of independent experts.

[4] Centre on Housing Rights and Evictions, "In Search of Equality: A Survey of Law and Practice Related to Women's Inheritance Rights in the Middle East and North Africa Region" (2006). See also E/CN.4/2005/43.

[5] UNFPA and the University of Aberdeen, "Maternal Mortality Update 2004: Delivering into Good Hands" (2005). United Nations Millennium Project, "Who's got the power? Transforming health systems for women and children" (2005). The exact relation of levels of maternal morbidity and mortality varies in different settings and data are limited, including according to age group. Estimates of annual global maternal morbidity range from a conservative 8 million to over 20 million.

be most needed. The protection of the right to health of women requires specific measures, particularly in the area of sexual and reproductive health, to ensure equal enjoyment of this right with men.

9. Women also suffer discrimination in the realization of the right to education. According to the UNDP Human Development Report, while worldwide gross primary school enrolment figures of girls and boys are close to parity, inequalities become significant with age. There are approximately two girls for every three boys in secondary schools, and only one woman per every four men at university level.[6] Social Watch, an international coalition of non-governmental organizations, has warned that inequalities in education might be increasing. According to its research, the balance between countries that progress and those that regress is worrisome, with regressions, in several of the States for which data are available, outnumbering those making progress by more than twice.[7]

10. Women are subject to multiple forms of discrimination, a phenomenon where an individual suffers discrimination on the basis of several grounds concurrently; for example, a woman with a disability might be subject to discrimination not only because of her sex but also for the fact that she has a disability, thus multiplying the barriers to her full participation in society.[8] The Committee on the Elimination of Racial Discrimination has observed that there are situations in which racial discrimination affects primarily or only women, or affects women in different ways. It has listed several examples, some of which are relevant to discrimination in the area of economic, social and cultural rights; for example, in its general recommendation XXV on gender-related dimensions of racial discrimination, the Committee noted that women workers in the informal sector or domestic workers employed abroad might suffer from both racial discrimination and discrimination on the basis of sex. The Committee further highlighted the fact that women might also be hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of discrimination on the basis of sex in the legal system or the private sphere.[9]

11. Inequality and discrimination based on sex prevent women from enjoying all economic, social and cultural rights. Additionally, they set off a chain reaction that affects the exercise of the full range of human rights, including civil and political rights, and constitute a manifestation of the indivisibility and interdependence of human rights. Discrimination in the right to housing directly affects women's enjoyment of other rights; without proof of residency, women are often unable to find stable work or to vote. Without secondary education, many women may not have an equal opportunity to have access to and make use of public information about any of their rights, or to be elected. Without adequate health services that ensure effective and timely attention during pregnancy, women's right to life is seriously at risk. Without a system that allows women to have access to judicial and

[6] With 64 per cent (world average) in gross secondary enrolment and only 25 per cent of women (world average) in gross tertiary enrolment. See UNDP, *Human Development Report 2007/2008*.

[7] See the Gender Equity Index 2008: progress and setbacks, available at the Social Watch website www.socialwatch.org (accessed 14 May 2008).

[8] Article 6 of the Convention on the Rights of Persons with Disabilities recognizes that "women and girls with disabilities are subject to multiple discrimination".

[9] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 18* (A/55/18), annex V.

other mechanisms of redress on an equal footing, impunity and silence perpetuate the violations we are aiming to combat.

12. Poverty can act as a cause as much as a consequence of discrimination against women in the area of economic, social and cultural rights. As the World Bank noted in its World Development Report for 2000-2001, while patterns of inequality vary across societies, in most countries the majority of women are disadvantaged in terms of their relative power and control over resources. Poverty outcomes are greatly affected by social norms, values and customary practices in the family, the community or the market, leading to further exclusion of women. Since political power may mimic the distribution of economic power, some State institutions may be particularly unfavourable to the poor.[10] Public investment may be subject to corruption and arbitrariness on the part of the State. In other cases, a lack of focused attention on the impact on the most disadvantaged groups — in other words, the absence of a human rights lens, rather than the leakage of public funds — may prevent the benefits of public investment from reaching these groups. Women heads of households, women living with HIV/AIDS, refugees, displaced or trafficked women, widows or older women are among the poorest population groups in the world.[11] In this context, direct and indirect costs required to have access to economic, social and cultural rights can aggravate existing exclusion. With regard to the right to education, the Committee on the Rights of the Child observed that the direct and hidden costs of education, such as school books, materials or "voluntary quotas", are widening the gender gap. As a consequence, it noted that some specific groups of children, such as pregnant girls, are predominantly affected.[12] The Committee on Economic, Social and Cultural Rights underscored, in its general comment No. 19, the redistributive character of social security, its role in poverty reduction and alleviation and its significance to women at various stages of their lives.[13]

B. Relevant treaty provisions

13. International human rights law prohibits discrimination against women and requires States to ensure equal enjoyment by women and men of economic, social and cultural rights. According to article 1 of the Universal Declaration of Human Rights, all human beings are born free and equal in dignity and rights, and distinctions of any kind, such as sex, are prohibited. The prohibition was reiterated in the International Covenant on Economic, Social and Cultural Rights through specific provisions. Article 2, paragraph 2, sets out the general principle of non-discrimination in relation to these rights, while article 3 explicitly refers to equality between men and women:

Article 2, paragraph 2

> "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without

[10] See *World Development Report 2000/2001: Attacking poverty*.

[11] See *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex II.

[12] See CRC/C/15/Add.186 and CRC/C/15/Add.147.

[13] See E/C.12/GC/19.

discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

14. The Covenant also includes provisions on equality and non-discrimination in relation to the right to equal remuneration for equal work (art. 7) and to education (access to higher education, art. 13).

15. Article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights mirrors article 2, paragraph 1, of the International Covenant on Civil and Political Rights, which sets forth an equivalent principle of non-discrimination. Article 26 of the latter Covenant provides for the protection of equality before the law, including a guarantee for effective protection against discrimination on any grounds, such as sex. This protection covers all rights, including economic, social and cultural rights; thus, for example, in 1984, the Human Rights Committee noted that article 26 was concerned with the prohibition of discrimination in law or in practice in any field regulated and protected by public authorities, including the right to social security, even though that right is recognized in the International Covenant on Economic, Social and Cultural Rights but not the International Covenant on Civil and Political Rights.[14]

16. Five other core international human rights treaties set out States' obligations to combat and eliminate discrimination. These instruments focus on discrimination on particular grounds, such as race or disability, and apply the general principles of non-discrimination and equality of men and women to economic, social and cultural rights. These treaties are (a) the International Convention on the Elimination of All Forms of Racial Discrimination; (b) the Convention on the Elimination of All Forms of Discrimination against Women; (c) the Convention on the Rights of the Child; (d) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and (e) the Convention of the Rights of Persons with Disabilities.

17. For the scope of the present report, article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, which defines the term "discrimination against women", offers essential guidance:

> For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

[14] See CCPR/C/29/D/182/1984.

18. Some elements of the above definition deserve closer examination:

(a) The principle of non-discrimination applies to all women, and given the scope of the Convention, the term "women" includes girls and adolescents. Similarly, this principle is essential in the consideration of all their human rights and fundamental freedoms, including economic, social and cultural rights;

(b) The principle of non-discrimination is linked to and complemented by the principle of equality between men and women, being two sides of the same coin. In practical terms, these two principles must be carefully crafted into legislation, policies, programmes, procedures and practices, each with its own specificities;

(c) The article states that discrimination means distinctions as well as exclusions or restrictions made on the basis of sex, offering a comprehensive set of ways in which actions and omissions might lead to a violation of human rights;

(d) Article 1 clarifies that such distinctions, exclusions or restrictions are violations, either when having the effect — the objective outcome — or with the purpose — the discriminatory intention — of impairing or nullifying the exercise of all rights by women.

C. Key concepts in relation to discrimination and equality

19. Over the years, the conceptual debate and the work of international and regional human rights bodies have significantly deepened the understanding of various forms of inequality between men and women, and of discrimination against women. In the paragraphs below, some key concepts meriting a discussion are presented as they relate to economic, social and cultural rights.

De jure and de facto discrimination and equality

20. Women are protected against discrimination that is both de facto and de jure; in other words, the principle of non-discrimination protects against discrimination in both practice and law. Thus, for example, laws ensuring inheritance rights to land or marital property only to men or legislation permitting different ages of marriage for men and women, or failing to offer equal protections from practices that promote child marriage, marriage by proxy, or coercion, are forms of de jure discrimination. Many States have made significant efforts to reduce de jure discrimination in recent decades. Nevertheless, a recent study commissioned by the Office of the High Commissioner for Human Rights (OHCHR) in 2008 underscores the persistence of discriminatory laws worldwide despite existing normative framework at the international level. Although most such laws are found in the civil sphere, they have far-reaching consequences and impact on the enjoyment by women of civil, cultural, economic, political and social rights.[15]

21. While examples of progress are to be found at the national level, this is often not sufficient to change discriminatory practices; consequently, the prohibition of discrimination goes beyond an examination of laws to consider de facto discrimination. Indeed, human rights law is concerned not only by formal equality (de jure equality) but also substantive or de facto equality. The distinction between

[15] Fareda Banda, "Project on a mechanism to address laws that discriminate against women", available at the OHCHR website www.ohchr.org (accessed 26 May 2008).

de jure and de facto equality for the protection of women's economic, social and cultural rights was addressed by the Committee on Economic, Social and Cultural Rights in its general comment No. 16 on article 3.[16] The Committee observed that "formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience" (para. 7). The Committee then underlined that "States parties should take into account that such laws, policies and practice [that are prima facie gender neutral] can fail to address or even perpetuate inequality between men and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women" (para. 8).

22. The Inter-American Commission on Human Rights has called for a more integral treatment of discrimination against women to achieve formal and substantive equality. The Commission has referred to a structural intervention aiming at "ending the subordination of women as a group" and not simply achieving formal equality among individuals. According to the Commission, the formal equality approach "assumes a world of 'autonomous individuals starting a race or making free choices'". In the case of women, "this approach to non-discrimination equates sexual equality with equal treatment, and [...] disregards the fact that men and women may be running different races from differing starting points".[17]

23. The Commission's approach goes beyond a consideration of standards and practices that are prima facie neutral to analysing their discriminatory impact when applied. The Commission highlights how "the discriminatory treatment manifests itself in individual cases, but is deeply rooted in a prejudice against the group. Structural intervention is needed to undo the gender hierarchy so firmly entrenched and institutionalized in society and so resistant to change". It then adds that "intervention has to be geared toward introducing change in basic social realms and institutions, such as justice, politics, the family and the marketplace".[18]

24. In recognition of the fact that human rights law examines discrimination and equality in both law and practice, treaty bodies consistently go beyond an examination of legislation to consider practices that might discriminate against women. For example, the Committee on the Elimination of Discrimination against Women has urged States to respect and promote the human rights of immigrant, refugee and minority women, including access to education and to work, over discriminatory cultural practices, and to take effective and proactive measures, including awareness-raising programmes, to sensitize the community to combat patriarchal attitudes and practices and stereotyping of roles, and to eliminate discrimination against women in immigrant and minority communities.[19]

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[16] See E/C.12/2005/4.

[17] Inter-American Commission on Human Rights, "Access to justice for women victims of violence in the Americas" (20 January 2007), paras. 72 and 73, OEA/Ser.L/V/II.Doc.68.

[18] Ibid, para. 77.

[19] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 38* (A/56/38), para. 206.

Direct and indirect discrimination

25. Discrimination can be both direct and indirect. Direct discrimination can be defined as a difference in treatment relying explicitly on distinctions based on sex or one of the other recognized categories of discrimination. Direct discrimination can appear in law and in practice, including customary practices, for example when women are not allowed to eat until men are fully fed, are only allowed less nutritious food, are forbidden to attend higher education, or when denied access to information about sexual and reproductive health issues.[20] Similarly, the refusal to hire women because they could become pregnant, or the termination of their contracts if they do so, constitute direct discrimination in relation to the right to work.

26. Indirect discrimination occurs when a law, policy or programme appears to be neutral (for example, as it relates to men and women), but has a discriminatory effect when implemented. In this case, the outcome or the end result creates a disadvantage for women compared to men, owing to pre-existing inequalities not addressed by a supposedly neutral measure. Indirect discrimination can exacerbate existing inequalities owing to a failure to recognize the historic patterns of discrimination. For example, in its general comment No. 1 on the aims of education, the Committee on the Rights of the Child, when referring to the aim of education (art. 29, para. 1 of the Convention on the Rights of the Child), stressed the impact of hidden discrimination on a girl's rights.[21]

27. The Committee on the Elimination of All Forms of Racial Discrimination has addressed the problem of indirect discrimination against women in relation to the spread of HIV/AIDS, notably among children, refugees and minorities. It often requests from States parties disaggregated information and campaigns in relation to those who are particularly vulnerable.[22] Some campaigns about health services, sexually transmitted diseases, including HIV/AIDS, and reproductive health might not be tailored to the women at greatest risk. For instance, according to the World Bank, in 2005, more than half the estimated 5 million people who had contracted HIV worldwide were young persons between the ages of 15 and 24, the majority of them young women and girls. Similarly, while nearly 60 per cent of young women in developing countries are mothers by the time they reach 25, relevant information about family planning, preventive and curative health care will often not reach this group of women unless they are specifically targeted.[23] Failure to adequately address a combined age-sex dimension when designing public policies may give rise to discriminatory effects, whether direct or indirect; in other words, while the

[20] Examples of possible violations of article 3 in relation to article 11 (1) and (2) are discussed by the Committee on Economic, Social and Cultural Rights in its general comment No. 16, paras. 27 and 28.

[21] "Discrimination [...], whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities [...]. To take an extreme example, gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits that girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation." CRC/GC/2001/1, para. 10.

[22] See CERD/C/64/CO/9/2004, para. 17, CERD/C/ESR/CO/2007, para. 17 and CERD/C/ZAF/CO/3/2006, para. 20.

[23] See World Bank, *World Development Report 2007: Development and the next generation* (2006).

intention behind campaigns on these issues might not be discriminatory per se, failure to deliberately address the groups most at risk could effectively lead to indirect discrimination.

Temporary special measures

28. According to article 4(1) of the Convention on the Elimination of All Forms of Discrimination against Women, the adoption of temporary special measures aimed at accelerating de facto equality between men and women should not be regarded as discrimination. Rather, temporary special measures can be important to achieve the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women. The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 25, broadened the scope of such measures in relation to several other articles in the Convention, if such measures are necessary and appropriate in order to accelerate the achievement of women's de facto or substantive equality.[24]

29. Four characteristics must be kept in mind. Firstly, temporary special measures should not be deemed necessary forever, even though they might be applied for a long period of time. Since these measures must be functional, the period of application should depend on the achievement of substantive equality in a particular domain. Secondly, they comprise a wide variety of legislative, executive, administrative, programmatic and other regulatory instruments, policies and practices, such as hiring and promotion, targeted recruitment and tailor-made programmes. Thirdly, the meaning of "special" should not be seen as casting a veil of vulnerability over women; rather, the term refers to measures that are designed to serve a specific goal. Fourthly, the Committee stresses the importance of special temporary measures covering governmental actors as much as private organizations and enterprises.

30. Temporary special measures have been under-explored in relation to economic, social and cultural rights, and given the prevalence of the substantive inequality of women with regard to these rights, there appears to be an urgent need to incorporate these measures, such as promoting the completion of high school by pregnant girls, targeting scholarships by governmental and private actors for university level degrees, or introducing special provisions against traditional prejudice or other barriers for women farmers or heads of households to have access to credit, technology, seeds, land or judicial mechanisms. Certain special temporary measures in relation to economic, social and cultural rights might also improve the enjoyment of women's civil and political rights. For example, measures supporting the formation of trade unions by women could have flow-on effects in advancing their freedom of expression and right to take part in the conduct of public affairs.

Discrimination in the public and private spheres

31. Discrimination against women takes place not only in the public but also in the private domain. The private sphere includes the family, domestic unit or other interpersonal relationships, whether or not the same residence is shared. The General Assembly, in its resolution 48/104, originally referred to the elimination of violence against women in the private life (art. 1) or by a private actor (art. 4). The

[24] CEDAW/C/2004/I/WP.1, para. 25.

scope has evolved; more recently, the Committee on Economic, Social and Cultural Rights, in relation to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, highlighted the duty of States parties to take appropriate measures to eliminate violence against men and women by "private actors".[25]

32. Since it is in the private sphere that some women may be rendered most vulnerable and unprotected, the State is obliged to act with due diligence by providing adequate, effective and prompt responses to violations. This duty involves prevention, investigation, mediation, punishment and redress of human rights violations, and the obligation to prevent impunity. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has addressed the situation of "powerlessness" as a critical element to bear in mind when considering the private sphere, a consideration no less pertinent for economic, social and cultural rights.[26] Indeed, the degree of powerlessness of a person in the private sphere might not only be the result of discrimination but also lead to further discrimination. Violence and discrimination against women can threaten the rights to health, housing and privacy at home. If a woman cannot own, rent or use adequate housing independently of a spouse or male relative, she might lack the freedom to leave a situation of domestic violence.[27]

33. The Committee on the Elimination of Discrimination against Women has also emphasized the need to combat discrimination in the private sphere, and explicitly stated, in its general comment No. 20, that it is the States parties' obligation to ensure non-discrimination against women in laws and practice. States must also protect women from acts or omissions committed by public authorities, the judiciary, organizations, enterprises or private individuals, in the public or private spheres, by means of competent tribunals, sanctions and other remedies.

34. Since the private sphere is also where critical choices are made about reproductive health, the call by the Committee on Economic, Social and Cultural Rights on States parties to elaborate and implement national sexual and reproductive health programmes, ensuring women's rights on an equal footing with men's, is specifically relevant. The Committee has linked the lack of education in this domain and of information on contraceptives, or to their access, to the use of abortion as a means of family planning. It has advocated for sexual and reproductive health education programmes as a way to lower female mortality rates caused by illegal or unsafe abortions.[28]

[25] See E/C.12/2005/4, para. 27.

[26] In his report (A/HRC/7/3), the Special Rapporteur discusses some forms of torture or cruel, inhuman and degrading treatment such as domestic violence, human trafficking, rape, violence against pregnant women and female genital mutilation, all directly related to one or several economic, social and cultural rights.

[27] The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará) establishes that the due diligence obligation has a special connotation in cases of violence against women. For jurisprudence, see, for example, IACHR, Merits, report N° 54/01, Maria Da Penha Fernandes (Brazil), 16 April 2001.

[28] See E/C.12/1/Add.85, para. 53; E/C.12/1/Add.96, para. 50; E/C.12/1/Add.78, paras. 23 and 42; and E/C.12/MEX/CO/4, paras. 25 and 43.

Non-State actors

35. When addressing discriminatory and unequal policies and practices, the States parties' obligation to monitor and regulate the conduct of non-State actors is paramount. While many actors fall into this broad category, for the enjoyment of economic, social and cultural rights, some of the more commonly relevant are employers and other individuals in the workplace, health workers and professionals, teachers and administrative personnel in educational settings,[29] individuals in the private sphere, or other actors, such as corporations, where public services have been partially or fully privatized.

36. Incidentally, the Committee on the Elimination of Discrimination against Women has urged State parties to encourage all actors responsible for having directly or indirectly caused a health crisis by poisoning water resources with arsenic to share in the financial burden of compensating victims. The Committee requested that measures be put in place to ensure that safe drinking water was available to all and particularly to affected rural women and their families; that a plan of action containing preventative and remedial measures be prepared without delay; and that an awareness-raising campaign on health, nutrition and social programmes in relation to the water pollution be launched.[30]

Access to justice

37. The historic neglect in ensuring legal protection of economic, social and cultural rights, including the provision of remedies determined and enforced by competent judicial, administrative or legislative authorities, has been slowly declining at the national and international levels. In this regard, the prohibition of discrimination based on sex is an area which clearly lends itself to legal protection through tribunals. Nonetheless, while women in theory should be able to have access to an appropriate remedy in proved cases of discrimination, formal equality in law has not automatically been matched by equal access to justice.

38. In two reports, the Inter-American Commission of Human Rights conducted an analysis of access to justice for women victims of violence and access to justice as a guarantee of economic, social and cultural rights in the region.[31] The Commission noted that the State must not only avoid obstructing access by women to independent bodies and effective remedies, it also has a positive duty to organize the institutional apparatus to ensure access without discrimination in relation to all rights, which requires the removal of any regulatory, social or economic obstacles preventing or hindering access to justice by any group or individual in society. This

[29] The Committee on the Rights of the Child, in its general comment No. 3 (2003), refers to "in the home, in school or in the community".

[30] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 38* (A/59/38), para. 260.

[31] IACHR, "Access to justice for women victims of violence in the Americas" (20 January 2007), OEA/Ser.L/V/II.Doc.68, and "Access to justice as a guarantee of economic, social and cultural rights. A review of standards adopted by the Inter-American System of Human Rights" (7 September 2007), OEA/Ser.L/V/II.129/Doc.4/2007. The former report addresses how national legislation, policies and courts, as well as the inter-American human rights system, have incorporated international human rights standards, particularly those set by the Convention Belém do Pará and the Convention on the Elimination of All Forms of Discrimination against Women. The latter report includes examples where discrimination based on sex was explicitly addressed by the Commission and the Court.

is precisely why women are often left unprotected or even worse, why they do not seek remedies or redress. Obstacles are multiple, frequently intertwined with regulatory complications, social or cultural prejudices, lack of targeted provisions and discriminatory practices that have seldom been challenged, including subtle forms of discrimination sometimes borne out in irregular conduct of investigations of cases, flaws or delays in prosecution and punishment, and ineffective or delayed implementation of administrative remedies.

III. Women's economic, social and cultural rights in post-conflict societies

39. In section II of the present report, a general conceptual and legal framework highlighting the particular ways in which women have been disproportionately affected by violations of economic, social and cultural rights as a result of discrimination is discussed. Section III serves as a case study in post-conflict transition.

40. In a previous report (A/HRC/4/62), the need to integrate economic, social and cultural rights in the political, legal and social edifice of societies having experienced conflict was emphasized. The paragraphs below complement that analysis by considering women's economic, social and cultural rights based on the principles of equality and non-discrimination, bearing in mind that women's vulnerability to social and economic deprivation is usually deepened further in conflict and post-conflict situations.

41. If women have been victims of deeply rooted patterns of discrimination in societies at peace, the violations they often face are multiplied in societies in conflict. Previously existing discrimination based on gender, which violates women's economic, social and cultural rights, such as lack of access to education and social security, lack of adequate food, health care and housing, the inability to legally own or inherit property, is generally exacerbated during conflict. For example, while women continue to carry the disproportionate burden of domestic work, their unpaid labour becomes more complex and demanding in times of war, when they take on the additional role of head of household, substituting absent men. Public services are often hit hardest by conflict, and women spend longer hours carrying water, caring for children who no longer have a school to go to or for the sick in the absence of health services.[32] Moreover, women and children constitute over 80 per cent of the world's refugees and internally displaced persons.

42. As a result, these inequities, compounded by the violations of human rights experienced during the conflict, including rape, gender-based violence, abductions, forced marriages, forced labour and displacement, render the protection of women's economic, social and cultural rights an imperative consideration after war. In post-conflict situations, some of the major obstacles to the fulfilment of women's economic and social empowerment, in particular in the light of their new roles within families, might include the lack of access to land, legal ownership over or inheritance of housing and property, and the lack of access to adequate food, health care and justice.

[32] United Nations Development Fund for Women, "Women, War and Peace" (2002).

43. The relevance of focusing on women's economic, social and cultural rights emerges at various stages of post-conflict transition: during peace negotiations, during transitional justice processes, and during the early recovery, reconstruction and reintegration phases. An analysis of the violations of economic, social and cultural rights that might have disproportionately affected women and the root causes of the conflict that might have exacerbated the impact of such violations can make an important contribution to ensuring a durable and relevant response to post-conflict reconstruction.

Peace agreements

44. Peace agreements formally end armed conflict and provide the framework for the reconstruction of political, legal, economic and social structures, as well as promote equality between men and women as a means towards creating a stable and peaceful society. Peace agreements are also the basis for post-conflict legal and institutional arrangements, in which the reflection of gender-specific consequences of armed conflict and the priorities of women, including in relation to their economic, social and cultural rights, need to be reflected. Peace agreements, however, commonly include provisions with regard to political and legal security and relevant civil and political rights, but rarely address economic, social and cultural rights. Given that the rights fundamental to underpinning women's equality and non-discrimination and essential to pursue rehabilitation, reintegration and reconstruction are neglected, the sustainability of such agreements can be undermined.

45. Peace agreements should ensure substantive equality for women and end discriminatory practices against them, including temporary special measures, to develop a just and equal society with security and protection for women and men. Ideally, peace agreements should not only ensure women's equitable participation in democratic and policy processes in post-conflict societies, but also prescribe increases in budgetary allocations towards the attainment of economic, social and cultural rights for women to redress pre-conflict inequalities or inequality resulting from the conflict. In this context, a report of an expert group meeting organized by the Division for the Advancement of Women recommends that a national post-conflict socio-economic profile with sex-disaggregated data should form the basis for the development of socio-economic policies and programmes aimed at protecting the rights to health, education, an adequate standard of living, land and property, work, social security and nationality.[33]

Transitional justice

46. A focus on women's economic, social and cultural rights in transitional justice processes has been largely absent. However, given that social injustice is often a crucial factor leading to conflict and that conflicts aggravate social injustice, particularly through violations of women's economic, social and cultural rights, transitional justice processes must address these violations if they are to meet their purpose of facilitating the transformation of oppressed societies into free ones.

[33] Division for the Advancement of Women, report of the expert group meeting on peace agreements as a means for promoting gender equality and ensuring participation of women: a framework for model provisions, 2003, prepared by Christine Chinkin (EGM/PEACE/2003/BP.11).

47. Addressing violations of women's economic, social and cultural rights is implicit in the principles driving transitional justice processes. In 2005, the General Assembly, in its resolution 60/147, adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. These principles and guidelines refer to core international human rights instruments[34] where economic, social and cultural rights are included, and provide for their application and interpretation without discrimination on any grounds.

48. For the purpose of the guidelines, victims are defined in a comprehensive manner, covering those who have suffered violations of economic, social and cultural rights they are "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations on international humanitarian law" (annex, para. 8).

49. When characterizing reparations, according to the principles and guidelines, they must be "adequate, effective and prompt", and include restitution, compensation, rehabilitation and guarantees of non-repetition. Since each of these forms of reparation implies considerations of one or various economic, social and cultural rights, it is critical to guarantee that such deliberations are made with the aim of ensuring equality of men and women and non-discrimination based on sex.

50. Even if a uniform and expansive definition of "victim" were adopted, it would not settle the critical question of how to select human rights violations subject to reparations. This is particularly relevant to avoid neglect of women's economic, social and cultural rights. Considering diverse examples of reparation programmes to date, a study by OHCHR has indicated that no programme has explained why the victims of some violations were eligible for reparations while others were not. Not surprisingly, and at least in part as a consequence of this omission, most programmes have ignored types of violations that perhaps could and should have been included. Since these exclusions have affected women and marginalized groups disproportionately, the mere requirement to articulate the principles, or at least the grounds for selecting the violation of some rights and not others, is likely to remedy at least the more gratuitous exclusions.[35]

51. The High Commissioner has previously highlighted the importance of including violations of economic, social and cultural rights in the investigations of truth and reconciliation commissions with a view to achieving social justice for men and women.[36] Practice shows, however, that not only are truth commissions falling

[34] Specifically, the guidelines refer to the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.

[35] OHCHR, Rule-of-law tools for post-conflict States, reparations programmes (2008), pp. 21, 31, 32 and 36. Available at the OHCHR website www.ohchr.org (accessed 14 May 2008).

[36] See, for example, Arbour, Louise, "Economic and social justice for societies in transition". Second annual transitional justice lecture hosted by the New York University of Law Center for Human Rights and Global Justice and by the International Center for Transitional Justice, 25 October 2006, New York University School of Law.

short of addressing economic, social and cultural rights of women, they are also falling short of fully addressing these rights more generally. For example, when truth commissions have actually investigated violations of such rights, they generally fall short of proposing reparations to redress documented violations. The Timor-Leste commission, which investigated economic, social and cultural rights violations in great detail, decided not to regard victims of violations of these rights as beneficiaries for reparation for reasons of feasibility and needs-based prioritization.[37] Likewise, the Truth and Reconciliation Commission of Peru investigated human rights violations specifically affecting women by State and non-State actors, with inclusion of economic, social and cultural rights, particularly of rural women and girls, but failed to propose adequate reparations.[38]

Reconstruction

52. During conflict, women are not only victims of human rights violations: in the absence of men, they are also often faced with new roles and responsibilities. Often, however, women and their rights — and most frequently their economic, social and cultural rights — are excluded or overlooked during reconstruction.

53. An equitable, non-discriminatory post-conflict constitutional, legal and policy framework is an important component of the reconstruction of post-conflict societies. Such a framework ought to include provisions to promote equality in the areas of access to land and resources; inheritance and the right to own property; sexual and reproductive health; social security; and worker rights and education. Specific policies and practices of discrimination against women, regardless of whether they pre-date the conflict, are unlikely to end with a formal ceasefire, and will therefore need to be addressed comprehensively in the early recovery phase. One good example can be found in Rwanda, where women's rights to inheritance and to own property were guaranteed for the first time in laws adopted after the conflict.

54. Beyond laws, the protection of women's economic, social and cultural rights in post-conflict transition should be taken into account when rebuilding public services, such as water, sewage, schools or hospitals. A conscious effort will need to be made to address the specific health-care needs of women, such as treatment for sexually transmitted diseases, including HIV/AIDS and other physical or mental consequences of gender-based violence.[33] Many post-conflict programmes tend to focus solely on rehabilitating former combatants, overlooking the discriminatory impact of a reduction in work opportunities for women in formal and informal economic activities. In addition, positive measures must be taken upon return to protect and ensure equality for "camp-followers" and women, including girls, who have been abducted during conflict.

55. A critical issue for restitution programmes is the return to land. The principles on housing and property restitution for refugees and internally displaced persons (the "Pinheiro principles")[39] have provided guidance in several post-conflict

[37] Commission for Reception, Truth and Reconciliation in Timor-Leste, final report, part 11: recommendations, pp. 40-41 (see www.ictj.org).

[38] International Center for Transitional Justice, *What Happened to the Women? Gender and Reparations for Human Rights Violations*, edited by Ruth Rubio-Marin (2006), chap. 3.

[39] See E/CN.4/Sub.2/2005/17. These principles were endorsed by the Subcommission on the Promotion and Protection of Human Rights, on 11 August 2005.

societies such as in Bosnia and Herzegovina, Burundi, Cambodia, Guatemala, the Sudan and Uganda.[40] Principle 4 addresses the need to ensure equality between men and women with regard to voluntary return, legal security of tenure, property ownership, equal access to inheritance and use, and control of and access to housing, land and property. Concretely, widows have returned to their original homes after a conflict only to find them occupied by male members of the deceased husband's family who claim rights based on prevailing customary regimes. Such discriminatory practices have severe consequences for women and can lead to homelessness and landlessness, general housing and food insecurity, increased vulnerability to violence and social isolation.[40] States must therefore take action to address both formal and customary laws, as well as practices entrenching unequal inheritance and land rights for women.

IV. Concluding remarks

56. Women suffer disproportionally from inequality and discrimination in the protection and enjoyment of their economic, social and cultural rights. There is still a pervasive gap between de jure and de facto discrimination against women, often concealed in relation to economic, social and cultural rights. The private sphere continues to impose norms, rules and practices that prevent the enjoyment by women of all ages of their rights, in developed and developing societies alike. Both direct and indirect discrimination continues to be widespread, despite the adoption, decades ago, of international human rights norms that prohibit discrimination against women in the realm of economic, social and cultural rights.

57. In post-conflict transition, ensuring meaningful participation by women and women's organizations and the inclusion of specific concerns in relation to women's economic, social and cultural rights is paramount. In the design of legislation, programmes and policies at all levels, a human rights approach increases the likelihood that women's rights will be best served by any measure adopted. Post-conflict societies must make an effort to incorporate measures founded on equality between women and men and non-discrimination against women in the realm of economic, social and cultural rights, in order to redress conflict-related violations, build sustainable peace and rectify prior inequalities.

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[40] For more details, see the handbook "Housing and Property Restitution For Refugees and Displaced Persons" (2007), jointly published by the Food and Agriculture Organization of the United Nations, the Norwegian Refugee Council, the Office for the Coordination of Humanitarian Affairs, OHCHR, UN-Habitat and the Office of the United Nations High Commissioner for Refugees (UNHCR).